* **HIGH COURT OF DELHI AT NEW DELHI**

\+ **CS(OS) No. 2322/2007**

Date of decision : 11th December, 2007

\# Advance Magazine Publishers. Inc.

..... PLAINTIFF

! Through : Ms. Anuradha Salhotra, Adv.
Ms. Divya Vijan, Advocate

Versus

$ Shakeel Ahmed

..... DEFENDANTS

^ Through : Nemo.

%

CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not?

(3) Whether the judgment should be reported in the Digest ?

ARUNA SURESH, J. (Oral)

1. The territorial jurisdiction of this court is disputed. Learned counsel for the petitioner has submitted that plaintiff has its office at Delhi and therefore this Court has territorial jurisdiction to entertain the present suit. She has also

referred to para 30 of the plaint wherein it is averred as follows:-

> "The Plaintiff are carrying on business in New Delhi within the jurisdiction of this Hon'ble Court and this Hon'ble Court has jurisdiction to entertain the said suit."

2. However, plaintiff has neither been able to provide its address of Delhi nor any document has been placed on the record to show prima facie that plaintiff is carrying on business in Delhi. Even in this paragraph the address of the plaintiff is not disclosed. An opportunity was granted to the plaintiff to provide the particulars of the office which is alleged to be operating within the territorial jurisdiction of this Court.

3. Section 134 of the Trade Marks Act permits the plaintiff to file a suit for infringement of its registered trademark within the local limits of the jurisdiction of the competent Court where the plaintiff is carrying on its business for gain. This provision is an exception to Section 20 of the Civil Procedure Code. Since plaintiff has not been able to show prima facie that it is carrying on business within the local limits of this Court at Delhi at the time of institution

of the suit, the provisions of Section 134 of the Trade Marks Act do not come to the rescue of the plaintiff.

4. Learned counsel for the plaintiff further submitted that in their Magazine Vogue which is published from Bombay, the Delhi address of the plaintiff company is given. The documents placed on the record by the plaintiff do not lend support to these submissions. I have gone through all the copies of the Vogue placed on the record. None of these copies contain the address of the plaintiff company which is claimed to be in Delhi. In the issue of November, 2007, at page 38, the readers of the magazine have been provided with the address of the plaintiff as Vogue Letters, 2nd floor, Darabshaw House, Shoorji Vallabhdas Marg, Ballard Estate, Mumbai-400 001, for correspondence purposes or the readers of the magazine could email the plaintiff at vogueletters@condenast.in at the Bombay address given in the plaint. The other documents placed on the record are the photocopies of various Vogue magazines published from time to time. Therefore, even after perusal of these documents, it cannot be said that plaintiff has its office in Delhi and it is carrying on its business or works for gain within the local limits of Delhi.

5. Learned counsel for the plaintiff has referred to Mulla, The Code of Civil Procedure, Volume-II, Seventeenth Edition and has argued that the question of jurisdiction has to be decided only after the summons are served upon the defendant and an objection is raised challenging the territorial jurisdiction of this Court by the defendant in the written statement and evidence is also not to be pleaded in the plaint. According to her the address of the plaintiff, if any, of Delhi is a piece of evidence and not a material fact to be pleaded. I do not agree with the submissions of the learned counsel for the plaintiff. Every pleading must contain a statement of the material facts on which the party pleading relies but not the evidence by which those facts are to be proved. The pleadings are required to be specific containing all necessary details which are to be substantiated by way of evidence during the trial. If the pleadings are silent on particular material fact, a party cannot be allowed to prove the fact later on by adducing evidence. In the present case plaintiff has not pleaded the material fact of its having office at Delhi and the particulars of the said office are not given despite opportunity granted.

6. Reliance is also placed on ***Boston Scientific***

International B.V. v. Metro Hospital – MANU/DE/0331/2007. In the said case reference was made to ***Haryana Milk Foods Ltd. v. Chambel Dairy Products – 98 (2002) DLT 359 & Gupta Grobters Conduit Pipe Manufacturing Co. Pvt. Ltd. v. Anil Gupta and Anr. - 2001 VII AD (Delhi) 838*** wherein it was observed that mere bald assertions in the plaint with regard to jurisdiction would not confer jurisdiction. Both those cases were under the Trade Marks Act. The ***Boston's (supra)*** *case* was for recovery of money and the jurisdiction of the Court was to be seen as per Section 20 CPC and therefore, these two judgments were not relied by the Hon'ble Judge.

7. Similarly, in ***Exphar SA and Anr. v. Eupharma Laboratories Ltd. and Anr. - AIR 2004 SC 1682***, it was observed that the objection to the jurisdiction must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. It has to be seen that facts stated in the plaint must show that the Court does not have jurisdiction as a matter of law. It was further observed that the pleadings contained in the plaint are to be seen for rejection of plaint for want of jurisdiction and not the written statement of the defendant.

8. In this case even summons have not been issued and the jurisdiction of this Court has come under scrutiny of the Court. From the pleadings contained in the plaint, it cannot be inferred that this Court has the jurisdiction to entertain the present suit. Both the parties are neither residing nor working for gain in Delhi. Hence, I hold that this Court has no territorial jurisdiction to entertain the present suit. Plaint with original documents, if any, is ordered to be returned to the plaintiff in accordance with Order 7 Rule 10 CPC and the registry is directed to make necessary endorsement on the plaint as per provisions of Order 7 Rule 10(2) CPC. Plaint be returned within 15 days.

December 11, 2007 **ARUNA SURESH**
jk **(JUDGE)**